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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

J. STEPHEN GEHRING, BOBBY JONES, AND
LOIS JONES,

COMPLAINANTS,

VS.

PAYSON WATER CO., INC. /BROOKE
UTILITIES, INC.

RESPONDENT.

DOCKET NO. W-03514A-12-0008

PROCEDURAL ORDER

BY THE COMMISSION:

On January 11, 2012, J. Stephen Gehring, Bobby Jones and Lois Jones ("Complainants") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Payson Water Co., Inc. ("Payson Water" or "Company") and Brooke Utilities, Inc. ("BUI").

On January 30, 2012, the Respondent filed an Answer to the Complaint and Motion to Dismiss.

On February 13, 2012, the Complainants filed a Reply to Respondent's Answer and Motion to Dismiss.

On February 23, 2012, a Procedural Order was issued scheduling a procedural conference for March 9, 2012.

On March 9, 2012, the procedural conference was held as scheduled. At the conclusion of the procedural conference, the parties and the Commission's Utilities Division ("Staff") were directed to discuss mutually acceptable dates for filing of testimony and hearing, and to make a filing setting forth the agreed upon dates.

On March 12, 2012, a Joint Proposed Procedural Schedule was filed by Staff on behalf of the parties.

1 On March 19, 2012, a Procedural Order was issued scheduling a hearing to commence on
2 June 26, 2012, and establishing testimony filing dates.

3 On March 21, 2012, the Company filed a Board of Directors consent authorizing Robert
4 Hardcastle, the Company's president, to represent Payson Water in this proceeding.

5 On March 21, 2012, the Company filed a Motion to Strike Complainant's Referral to
6 Evidentiary Party.

7 On March 21, 2012, Payson Water filed a Motion to Delete Brooke Utilities, Inc. as a Party to
8 the Complaint.

9 On March 21, 2012, Complainants filed a Notice of Service of Process and Affidavit of
10 Attempted Service of Process regarding a subpoena issued to Martin's Trucking Service.

11 On March 21, 2012, Complainants filed a Notice of Service of Process and Affidavit of
12 Attempted Service of Process regarding a subpoena issued to Payson Water/BUI and Mr. Hardcastle.

13 On March 22, 2012, Payson Water filed a Motion to Compel Identification of Author of Data
14 Source Included as Evidentiary Exhibit.

15 On March 28, 2012, Complainants filed a Response and Objection to Respondents Motion to
16 Strike Complainant's Referral to Evidentiary Party [and] Motion to Deny.

17 On March 28, 2012, Complainants filed a Response and Objection to Respondents Motion to
18 "Delete" Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny the Deletion of
19 Brooke Utilities, Inc. from the Complaint.

20 On March 30, 2012, the Company filed a Motion to Modify Subpoena.

21 On March 30, 2012, Payson Water filed a Motion to Strike Non-Affiliated Parties.

22 On April 2, 2012, the Company filed a Reply to Complainants' Response to Payson Water
23 Co.'s Motion to Delete Brooke Utilities Inc. as a Party to the Complaint.

24 On April 2, 2012, Payson Water also filed a Reply to Complainants' Response to Payson
25 Water Co.'s Motion to Strike Non-Evidentiary Party and Motion to Deny.

26 On April 2, 2012, the Complainants filed a Response to Respondent's Motion to Compel
27 Identification of Author of Data Source Included as Evidentiary Exhibit.

28 On April 4, 2012, the Complainants filed a Response and Objection to Respondent's Motion

1 to Strike Non-Affiliated Parties' Motion to Deny.

2 On April 4, 2012, the Complainants also filed a Response and Objection to Respondent's
3 Motion to Modify Subpoena [and] Motion to Deny and Compel Compliance with the Subpoena by
4 Order.

5 On April 9, 2012, the Complainants filed a Motion to Compel Martin Zabala of Martin's
6 Trucking Service to Comply with Subpoena Duces Tecum.

7 On April 9, 2012, the Complainants filed a Response and Objection to Respondent's Motion
8 to Modify Subpoena [and] Motion to Deny and Compel Compliance with the Subpoena by Order.

9 On April 9, 2012, the Complainants also filed an Objection to Respondent's Reply to
10 Complainants' Response to Respondent's Motion to Strike Non-Evidentiary Party and Motion to
11 Deny.

12 On April 9, 2012, Payson Water filed a Reply to Complainants' Response to Payson Water
13 Co.'s Motion to Strike Non-Affiliated Parties and Motion to Deny.

14 On April 11, 2012, the Complainants filed a Response and Objection to Respondent's Motion
15 to "Delete" Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny the Deletion of
16 Brooke Utilities, Inc. from the Complaint.

17 On April 11, 2012, the Complainants also filed an Objection to Respondent's Reply to
18 Complainants' Response and Objection to Respondent's Motion to Strike Non-Affiliated Parties.

19 On April 12, 2012, the Company filed a Reply to Complainants' Second Response and
20 Objection to Respondent's Motion to Modify Subpoena.

21 On April 13, 2012, Payson Water filed a Motion to Compel Complainants to Comply with
22 Discovery Request for First Set of Data Requests.

23 On April 16, 2012, the Company filed a Notice of Payson Water Co.'s Treatment of Brooke
24 Utilities, Inc. as a Non-Party to the Complaint.

25 On April 17, 2012, the Complainants filed an Objection to Respondent's Reply to
26 Complainants' "Supplement" (Second Response) and Objection to Respondent's Motion to Modify
27 Subpoena.

28 On April 18, 2012, the Company filed a Motion to Compel Complainants to Comply with

1 Discovery Request for Second Set of Data Requests.

2 On April 19, 2012, the Complainants filed a Notice of Complainants' Compliance with
3 Respondent's 1st and 2nd Data Requests.

4 On April 19, 2012, the Complainants also filed an Objection to Respondent's Notice of
5 PWC's Treatment of Brooke Utilities, Inc. as a Non-Party to the Complaint.

6 On April 19, 2012, the Company filed a Supplemental Motion to Compel Complainants'
7 Response to the First and Second Set of Data Requests.

8 On April 20, 2012, Staff filed a Notice of Filing regarding the status of a subpoena issued to
9 Martins Trucking Service.

10 On April 20, 2012, the Complainants filed a Notice of Service of Process and Record of
11 Attempted Service of Process.

12 On April 24, 2012, the Complainants filed a Motion to Compel Respondent's Compliance
13 with Subpoena.

14 On April 24, 2012, the Complainants also filed a Notice of Complainants' Acknowledgement
15 of the Commission's Denial of Respondent's Motion to Strike Referral to Evidentiary Party.

16 On April 24, 2012, the Complainants also filed an Objection to Respondent's Supplemental
17 Motion to Compel Complainants' Response to the 1st and 2nd Set of Data Request.

18 On April 24, 2012, the Complainants filed a Notice of Complainants' Acknowledgement of
19 the Commission's Denial of Respondent's Motion to Strike Non-Affiliate Parties.

20 On April 24, 2012, the Complainants also filed a Notice of Complainants' Acknowledgement
21 of the Commission's Denial of Respondent's Motion to Modify Subpoena.

22 On May 9, 2012, Payson Water filed a Motion to Compel Complainants to Comply with
23 Discovery Request for Fourth Set of Data Requests.

24 On May 14, 2012, the Complainants filed a Response to Respondent's Motion to Compel
25 Complainants' to Comply with Discovery Request for 4th Set of Data Requests.

26 On May 14, 2012, the Complainants also filed a Request for Procedural Hearing [on]
27 Discovery and Disclosure Issues and Compliance with Subpoena.

28 On May 15, 2012, Mr. Gehring filed a Notice of Complainant Gehring Filing his "Direct

1 Testimony” Per Procedural Order of March 19, 2012.

2 On May 15, 2012, Mr. and Mrs. Jones filed a Notice of Complainants Bobby Jones and Lois
3 Jones Filing Their “Direct Testimony” Per Procedural Order of March 19, 2012.

4 On May 31, 2012, Payson Water filed an Objection to Complainants’ First Set of Data
5 Requests.

6 On June 6, 2012, the Complainants filed a Motion to Compel Respondent to Comply with
7 Discovery Request for 1st Set of Data Requests. In the motion, the Complainants requested, among
8 other things, that the hearing scheduled for June 26, 2012 be used to resolve discovery issues, and
9 that the discovery schedule be extended for an additional 60 to 90 days.

10 On June 11, 2012, the Complainants filed a Notice of Complainants’ Initial Discovery and
11 Disclosure.

12 On June 12, 2012, the Complainants filed a Motion [for] Continuance [of] Discovery Beyond
13 the Discussed and Unconfirmed Conclusion Date and for a Continuance of the Date Scheduled for
14 Hearing on the Complaint.

15 On June 14, 2012, the Complainants filed a Notice of Complainants’ Supplemental Discovery
16 and Disclosure No. 1.

17 On June 14, 2012, the Company filed Rejoinder Testimony of Payson Water Co., Inc.

18 On June 14, 2012, Staff filed a Notice of Filing Staff’s Response.

19 On June 15, 2012, Payson Water filed Respondent’s Objection to Complainants’ Motion to
20 Continue Discovery and Previously Scheduled Hearing.

21 Good cause has not been shown for continuance of the discovery schedule or the current
22 hearing date. The Complainants have pre-filed testimony and exhibits in support of their allegations,
23 and the Company and Staff have filed responsive testimony and information. The hearing will
24 proceed, as currently scheduled, on June 26, 2012.

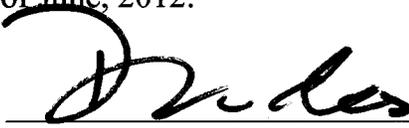
25 **IT IS THEREFORE ORDERED that the Complainants’ request for continuance of the**
26 **discovery deadline and hearing date is denied. The hearing will commence on June 26, 2012, at**
27 **10:00 a.m., as currently scheduled.**

28 **IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized**

1 Communications) continues to apply to this proceeding and shall remain in effect until the
2 Commission's Decision in this matter is final and non-appealable.

3 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
4 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
5 hearing.

6 DATED this 18th day of June, 2012.

7 
8 _____
9 DWIGHT D. NODES
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered
11 This 18th day of June, 2012 to:

12 J. Stephen Gehring
13 8157 W. Deadeye Road
14 Payson, AZ 85541

14 Bobby Jones
15 Lois Jones
16 7325 N. Cabellero Road
17 Payson, AZ 85541

18 Robert T. Hardcastle
19 BROOKE UTILITIES, INC.
20 P.O. Box 82218
21 Bakersfield, CA 93380

19 Janice Alward, Chief Counsel
20 Legal Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, AZ 85007

22 Steve Olea, Director
23 Utilities Division
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
26 Phoenix, AZ 85007

26 By: 
27 Debbi Person
28 Assistant to Dwight D. Nodes